IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1494 OF 2005

Mrs.Manjiri Madhukar Deshmukh. ... Petitioner
Versus.
M/s.Omega Information System. ... Respondents.

Shri Ashutosh M.Kulkarni for the Petitioner.

Shri S.S.Patwardhan for the Respondent No.1.

Ms.M.H.Mhatre, A.P.P.for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 19th July, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Parties. The challenge in this Petition under Article 227 of the Constitution of India is to the Judgment and Order dated 13th May 2005 passed by the learned Judicial Magistrate First Class, Miraj, by which the Application made by the Petitioner at Exh.74 has been rejected.

2. The Petitioner is an accused in a Complaint under section 138 of the Negotiable Instruments Act, 1881 filed by the Respondent No.1. The prayer made by the Petitioner in the Application at Exh.74 is for a direction for taking samples of the hand writing and signatures of the Petitioner and her husband and for sending the same to the hand writing expert along with the cheque at Exh.45 allegedly drawn by the Petitioner for the purpose of enabling the hand writing expert to

give his opinion as regards the signature appearing on the cheque.

3. The learned Counsel for the Petitioner submitted that in the cross-examination of the P.W.1 examined by the Complainant, the Petitioner has specifically given a suggestion that the cheque at Exh.45 is not signed by her. He submitted that the signature on the cheque is obviously different from the various signatures of the Petitioner which are on record of the case. He submitted that the learned trial Judge could not have rejected the Application made by the Petitioner as the Petitioner has right to establish that she has not signed the cheque. He invited my attention to paragraph 9 of the impugned Judgment and order which shows that the learned Judge even declined to compare the signature on the disputed cheque with the signature which was admitted by invoking section 73 of the Indian Evidence Act, 1872. He placed reliance on the decision of the learned Single Judge of this Court reported in 1997 VI L.J. page 355 (Chhaya R.Pawar v/s. Rama Pawar and another) and submitted that the case was made out for referring the document to hand writing expert.

4. Shri Patwardhan the learned Counsel appearing for the Respondent No.1 submitted that at the fag end of the trial the Petitioner has denied her signature on the cheque. Till the witness examined by the Respondent

No.1 stepped into the witness box, the Petitioner never disputed her signature. He submitted that no interference is called for in the writ petition under Article 227 of the Constitution of India.

5. I have considered the rival submissions. The case of the Respondent No.1 is that there was an award made in the arbitration proceedings between the Petitioner and the Respondent No.1 and the Respondent No.1 had filed execution proceedings in the Civil Court for execution of the Award. In execution proceedings, the Civil Court issued warrant of attachment against the property of the Petitioner. When the Court Bailiff attempted to execute the Warrant on 12th September 2001, the son of the Petitioner delivered a cheque dated 20th November 2001 duly signed by the Petitioner in the sum of Rs.12,34,929/-. Therefore, the Bailiff did not execute the order of attachment. A true copy of the report of the Bailiff is on record of this petition.

6. The said cheque handed over to the Bailiff was dishonoured. Therefore, notice dated 27th November 2001 was issued by the Respondent No.1 to the Petitioner calling upon him to pay the amount payable under the said cheque. Though the said notice was served on the Petitioner, there was no reply sent by the Petitioner to the said notice and therefore, Complaint under section 138 of the said Act of 1881 came to be filed. It is

pertinent to note that specific case made out by the Petitioner is that after her son handed over the cheque allegedly drawn by her to the Court Bailiff, by letter dated 16th November 2001 she informed the representative of the Respondent No.1 not to encash the cheque. A copy of the letter dated 16th November 2001 is placed on record. The cheque was allegedly handed over to the Court Bailiff on 12th September 2001 and the said letter dated 16th November 2001 sent by the Petitioner to the representative of Respondent No.1 clearly shows that the Petitioner did not dispute her signature on the cheque. All that she stated in the said letter is that as there was a dispute regarding payment of the amount, the cheque taken in her absence should not be encashed.

7. It cannot be ignored that the cheque was issued when the Court Bailiff visited the premises of the Petitioner for executing warrant of attachment in execution of an award. There is no reply sent to the notice under section 138 issued by the Respondent No.1 raising objection that the cheque was not signed by her. In the letter dated 16th November 2001 it was not at all stated that the cheque is not signed by her. The only request made in the letter is that since the dispute was pending, the cheque taken in her absence may not be encashed. Thus the Petitioner had at least have two opportunities to raise a contention that the cheque was not signed by her. The said opportunities were not at

all availed of and on the contrary letter dated 16th November 2001 suggests that the Petitioner never intended to dispute her signature on the cheque. It is true that in the cross-examination of P.W.1, a suggestion is given that the cheque does not bear signature of the Petitioner. It is obvious that the contention as regards the non-signing of the cheque is raised as an afterthought. The observation made by the learned trial Judge in paragraph 9 may not be correct but the question is whether the Application at Exh.74 could have been allowed which is made at the instance of the Petitioner. In the cross-examination, the Petitioner admitted that on some occasions she used to sign blank cheques whenever she was residing at Miraj in order to facilitate transaction of the firm. It is obvious that there is no bonafide dispute about the signature of the Petitioner on the cheque. The Application at Exh.74 was preferred to obstruct the hearing of the trial. Considering the conduct of the Petitioner and the facts of the case, this is not a case where the jurisdiction of this Court under Article 227 of the Constitution of India could be exercised in favour of the Petitioner. Hence the Petition is rejected.

Judge.